

62. STRIKES

62.2: Right to Strike [See also 21.8 and 72.365.]

“[R]espondent had the right to strike specifically granted its members by the legislature” since “employees under Montana’s Collective Bargaining for Public Employees Act ... are nowhere prohibited from striking.” **Department of Highways v. Public Employees Craft Council (1974)**

62.21: Right to Strike – Protected Strikes

See **ULP #14-74**.

62.23: Right to Strike – Prohibited Strikes

“[T]he strike was illegal and ... the state acted within its rights. The change in vacation leave was not an unfair labor practice....” **ULP #47-79**

62.232: Right to Strike – Prohibited Strike – No-Strike Clause in Contract

Although a compulsory arbitration and a no-strike clause are included in the contract, the wage re-opener provision is excluded from arbitration, and so a strike is a legal action on the part of the union and is not an unfair labor practice. **ULP #16-74**

62.31: Types of Strikes – Economic

“An economic strike is one that is neither caused nor prolonged by an unfair labor practice on the part of the employer [T]he strike was an economic strike and was not a strike proximately caused by the alleged unfair labor practice.” **ULP #11-79**

See also **ULPs #14-74 and #34-82**.

“On April 26, 1991 members of the Complainant Union commenced an economic strike against the Defendant Employer.” **ULP #8-92**.

62.36: Types of Strikes – Unfair Practice

“An unfair labor practice strike is an activity initiated in whole or in part in response to an unfair labor practice committed by the employer.... [T]he pivotal question is whether the unfair labor practice is a proximate cause of the strike.... [T]he Examiner cannot find substantial evidence in the record that the State’s insistence on the stipulation [related to fact finding] triggered the strike.” Therefore, “the strike was an economic strike and was not a strike proximately caused by the alleged unfair labor practice.” **ULP #11-79**

62.41: Strike Conduct – Strike Authorization

Strike authorization votes are matters of internal union policy and are protected as a “concerted activity for the purpose of collective bargaining.” (See **RCM 1947, 59-1603.**) The Unfair labor practice charge by the employer was dismissed. **ULP #11-75**

62.44: Strike Conduct – Strike Breakers

“The action of Defendant discriminated solely on the basis of union activity, those who crossed the picket lines and agreed to work were singled out for special treatment.” **ULP #34-82**

“The Board of Personnel Appeals found that the school district discriminated against the strikers solely on the basis of union activity. We disagree. The school district discriminated in favor of the non-strikers because they took the affirmative step of agreeing to teach for eighteen days and forego other options for those days. Moreover, the payments were made more than a year after the strike and only after the threat of a lawsuit. The school district’s conduct arose out of a unique situation and is not the equivalent of permanently discharging strikers or granting superseniority to non-strikers. The inherently destructive label simply does not fit this conduct. Therefore, we uphold the District Court’s reversal of the Board of Personnel Appeals on this point.” **ULP #34-82 Montana Supreme Court (1986).**

62.521: Employer Action – Reactions to Strikes – Loss of Pay

“[W]here differentiations by employers have been made between strikers and non-strikers in the provision of bonuses or other special benefits, the Board and courts have viewed it with disfavor.” **ULP #34-82**

“The hearing examiner’s single conclusion of law stated that ‘By its action in paying those twenty teachers who said they would work, seventeen of whom worked one day, and failing to pay the remaining teachers (Missoula County High School District) violated §**39-31-401(1) and (3) MCA**’.” However, the District Court ordered “that the Decision of the Board of Personnel Appeals is reversed, the Final Order of the Board is vacated, and the unfair labor practice charge against the Petitioner, Missoula County High School District is dismissed.” **ULP #34-82 District Court (1985)**

See also **ULP #13-78.**

62.523: Employer Action – Reactions to Strikes – Termination

Discharge of striking teachers is an unfair labor practice, although the School Board does have the right to replace them. **ULP #17-75**

“In Board of Trustees [of Billings School District] v. State ex rel. Board of Personnel Appeals ... our Supreme Court recognized that an employer has the right to inform striking employees of the employer’s intent to permanently replace non-returning workers after a specified date.... Here, there is nothing contained in the letter which could be deemed, as a matter of fact, coercive.”
ULP #11-79

62.524: Employer Action – Reactions to Strikes – Lockouts

“During the school closure, a certain percentage of teachers and students were in the classrooms. If there was no labor disagreement in Columbia Falls, the schools would have been open and teachers employed. The teachers requested pay for the four days the schools were closed.... It is a negotiable item....” **ULP #25-76**

62.525: Employer Action — Reactions to Strikes — Other

“[O]n April 26, 1991, all pre-approved annual vacation leave of all employees, whether union or non-union, organized or unorganized, was canceled. The cancellation of pre-approved annual vacation leave remained in force throughout the duration of the strike from April 26, 1991 until April 30, 1991.”
See **ULP #8-92**.